

1 Kimmel & Silverman, P.C.
2 30 East Butler Pike
3 Ambler, PA 19002
4 Telephone: (215) 540-8888
5 Attorney of Record: Amy Bennecoff Ginsburg (AB0891)
6 Attorney for Plaintiff

7 **UNITED STATES DISTRICT COURT**
8 **FOR THE**
9 **DISTRICT OF NEW JERSEY**

7 **WILLIAM ELLISON,**)
8 Plaintiff,) **Case No.:**
9 **v.**)
10 **CAPITAL ONE BANK (U.S.A.), N.A.,**) **COMPLAINT AND DEMAND**
11 Defendant.) **FOR JURY TRIAL**
12) **(Unlawful Debt Collection Practices)**
13)

14 **COMPLAINT**

15 WILLIAM ELLISON (“Plaintiff”), by and through his attorneys, KIMMEL &
16 SILVERMAN, P.C., alleges the following against CAPITAL ONE BANK (U.S.A.), N.A.
17 (“Defendant”):

18 **INTRODUCTION**

19 1. Plaintiff’s Complaint is based on the Telephone Consumer Protection Act
20 (“TCPA”), 47 U.S.C. §227 *et seq.*
21

22 **JURISDICTION AND VENUE**

23 2. This Court has subject-matter jurisdiction over the TCPA claims in this action
24 under 28 U.S.C. § 1331, which grants this court original jurisdiction of all civil actions arising
25 under the laws of the United States. See Mims v. Arrow Fin. Servs., LLC, 565 U.S. 368, 386-87

1 (2012) (confirming that 28 U.S.C. § 1331 grants the United States district courts federal-
2 question subject-matter jurisdiction to hear private civil suits under the TCPA).

3 3. Defendant conducts business in the State of New Jersey, and as such, personal
4 jurisdiction is established.

5 4. Venue is proper pursuant to 28 U.S.C. §1391 (b)(2).

6 **PARTIES**

7 5. Plaintiff is a natural person residing in Willingboro, New Jersey 08046.

8 6. Plaintiff is a “person” as that term is defined by 47 U.S.C. §153(39).

9 7. Defendant is a corporation with its principal place of business located at 1680
10 Capital One Drive, McLean, Virginia 22101.

11 8. Defendant is a “person” as that term is defined by 47 U.S.C. §153(39).

12 9. Defendant acted through its agents, employees, officers, members, directors,
13 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

14 **FACTUAL ALLEGATIONS**

15 10. Plaintiff has a cellular telephone number.

16 11. Plaintiff has only used this number as a cellular telephone number.

17 12. Defendant called Plaintiff on his cellular telephone on a repetitive and
18 continuous basis.

19 13. When contacting Plaintiff on his cellular telephone, Defendant used an automatic
20 telephone dialing system and automatic and/or pre-recorded messages.

21 14. Plaintiff knew Defendant was calling him using an automatic telephone dialing
22 system and automatic and/or pre-recorded messages as he received calls from Defendant that
23 began with a delay or pause prior to a live representative of Defendant coming on the line.
24
25

1 26. The acts and/or omissions of Defendant were done unfairly, unlawfully,
2 intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal
3 defense, legal justification or legal excuse.

4 27. As a result of the above violations of the TCPA, Plaintiff has suffered the losses
5 and damages as set forth above entitling Plaintiff to an award of statutory, actual and treble
6 damages.

7
8 WHEREFORE, Plaintiff, WILLIAM ELLISON, respectfully prays for judgment as
9 follows:

- 10 a. All actual damages Plaintiff suffered (as provided under 47 U.S.C. §
11 227(b)(3)(A));
- 12 b. Statutory damages of \$500.00 per violative telephone call (as provided
13 under 47 U.S.C. § 227(b)(3)(B));
- 14 c. Treble damages of \$1,500.00 per violative telephone call (as provided
15 under 47 U.S.C. § 227(b)(3));
- 16 d. Injunctive relief (as provided under 47 U.S.C. § 227(b)(3)); and
- 17 e. Any other relief this Honorable Court deems appropriate.
- 18
19
20
21

22 **DEMAND FOR JURY TRIAL**

23 PLEASE TAKE NOTICE that Plaintiff, WILLIAM ELLISON, demands a jury trial in
24 this case.

25

CERTIFICATION PURSUANT TO L.CIV.R.11.2

I hereby certify pursuant to Local Civil Rule 11.2 that this matter in controversy is not subject to any other action pending in any court, arbitration or administrative proceeding.

Respectfully submitted,

Dated: 3-27-2020

/s/ Amy L. Bennecoff Ginsburg
Amy L. Bennecoff Ginsburg
Kimmel & Silverman, P.C.
30 East Butler Pike
Ambler, PA 19002
Phone: (215) 540-8888
Facsimile: (877) 788-2864
Email: aginsburg@creditlaw.com